

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MAGDA DE LA TORRE,  
*Plaintiff,*

v.

DIRK BERRY and  
AKIN-PORTER PRODUCE, INC.  
dba AKIN & PORTER PRODUCE  
*Defendants.*

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CIVIL ACTION NO. 5:22-cv-253

**DEFENDANTS' NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Defendants, DIRK BERRY and AKIN-PORTER PRODUCE, INC. dba AKIN & PORTER PRODUCE (herein "Defendants") pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446, and give notice to this Court of the removal of the case styled: *Magda De La Torre v. Dirk Berry and Akin-Porter Produce, Inc. dba Akin & Porter Produce*, Cause Number 2022CI01934 in the District Court, 288<sup>th</sup> Judicial District of Bexar County, Texas ("Lawsuit") to the United States District for the Western District of Texas, San Antonio Division, and respectfully show as follows:

**The Parties & Procedural History**

1. Magda De La Torre ("Plaintiff") filed her Original Petition styled: *Magda De La Torre v. Dirk Berry and Akin-Porter Produce, Inc. dba Akin & Porter Produce*, Cause Number 2022CI01934 in the District Court, 288<sup>th</sup> Judicial District of Bexar County, Texas. In her Lawsuit, Plaintiff makes allegations of negligence against the Defendants and pleads "Plaintiff has been damaged in a sum in excess of the minimum jurisdictional limits of this Court and is entitled to damages ...All in the amount of \$500,000.00." exclusive of interest and costs, satisfying 28 U.S.C §1332(a). See Plaintiff's Original Petition included in Exhibit A.

2. Defendant, DIRK BERRY, was served with the Lawsuit by service of citation on February 14, 2022.

3. Defendant, AKIN-PORTER PRODUCE, INC., was served with the Lawsuit by service of its registered agent, Mr. Joe D. Porter, on February 16, 2022.

4. The State Court Petition alleges that Plaintiff, MAGDA DE LA TORRE is an individual who is a resident of Texas. The State Court Petition further alleges that Defendant AKIN PORTER PRODUCE, INC. dba AKIN PORTER PRODUCE is a duly organized entity in Tennessee, thereby establishing diversity of the parties of this case. Defendant AKIN PORTER PRODUCE, INC. dba AKIN PORTER PRODUCE's principal place of business is in Tennessee. It is a single member limited liability company and its sole member is based in Tennessee. Further, Defendant DIRK BERRY resides at 1281 McCollum Road, Greenfield, Tennessee 38230.

#### **Removal Based on Diversity Jurisdiction**

5. Defendants file this Notice of Removal as required by 28 U.S.C § 1446, removing this case to the U.S. District Court for the Western District of Texas, San Antonio Division because it falls within this Court's diversity subject-matter jurisdiction under 28 U.S.C. § 1332.

6. Defendants' filing of this Notice of Removal is timely under 28 U.S.C. § 1446(b) because the Lawsuit and citation in this action were first served on February 14, 2022, by service upon Defendant, DIRK BERRY, making the last day to remove March 16, 2022.

7. Removal is proper because it is judicially admitted by Plaintiff that there is complete diversity between the Plaintiff and Defendants and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a):

- a) Plaintiff's Original Petition states she is a resident of Bexar County, Texas.<sup>1</sup>
- b) Plaintiff's Original Petition pleads and thereby judicially admits Defendant, DIRK BERRY, is a resident of the State of Tennessee and judicially admits Defendant AKIN PORTER PRODUCE, INC. dba AKIN PORTER PRODUCE is a duly organized entity in Tennessee .
- c) The amount in controversy exceeds \$75,000, excluding interest, costs and attorneys' fees.  
*See* 28 U.S.C. § 1332(a).

### **Venue is Proper**

8. Venue of this removed action is proper in this Court because this district and division embrace the place where the state-court removed action has been pending. 28 U.S.C.A. §1441(a).

### **No Waiver**

9. By virtue of this removal petition, Defendants do not waive their right to assert any claims, pleas, or motions, including, if any, pleas in abatement, motions to compel arbitration, and motions permitted by Rule 12 of the Federal Rules of Civil Procedure.

### **Defendants Have Met the Other Requirements for Removal**

10. Defendants have complied with all applicable provisions of 28 U.S.C.A. §1441 *et seq.*, the applicable Federal Rules of Civil Procedure, and the Local Rules in this District. Defendants were first served with the Original Petition on February 14, 2022. Therefore, Defendants file this Notice of Removal within the 30-day time-period required by 28 U.S.C. §1446(b).

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<sup>1</sup> See Plaintiff's Original Petition included in Exhibit 1.

11. The filing fee of \$402.00 has been tendered to the Clerk of the United States District Court for the Western District of Texas, San Antonio Division, along with the original Notice of Removal.

**Attachments**

12. Pursuant to 28 U.S.C. § 1446(a), attached are the following documents:

All pleadings, process, orders and all filings in the State Court Action	Exhibit "A"
Copy the State Court Docket Sheet	Exhibit "B"
Index of matters being filed	Exhibit "C"
A list of all counsel of record, including addresses, telephone numbers and parties represented.	Exhibit "D"
A copy of the "Notice to State Court of Removal to Federal Court" (without exhibits) that will be filed with the District Clerk of Webb County, Texas.	Exhibit "E"

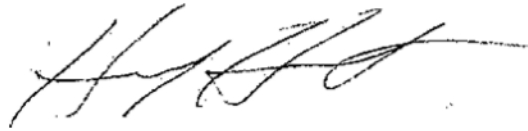
**Notice to State Court**

13. Pursuant to 28 U.S.C. § 1446(d), Defendants shall promptly serve a copy of this Notice of Removal on Plaintiff and shall promptly file a copy of this Notice of Removal with the District Clerk of Bexar County, Texas. A copy of the "Notice to State Court of Removal to Federal Court" (without exhibits) that will be filed with the District Clerk of Bexar County, Texas is attached as Exhibit "E".

**WHEREFORE, PREMISES CONSIDERED,** Defendants, DIRK BERRY and AKIN-PORTER PRODUCE, INC. dba AKIN & PORTER PRODUCE, request that this action be removed from the 288<sup>th</sup> Judicial District Court, Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

LAW OFFICE OF JOHN MARTINEZ  
1100 NORTHWEST LOOP 410, SUITE 370  
SAN ANTONIO, TX 78213-2200  
(210) 390-3548  
(855) 949-1338 FACSIMILE  
[Howerh1@nationwide.com](mailto:Howerh1@nationwide.com)

A handwritten signature in black ink, appearing to read 'H. Howerton', with a horizontal line extending from the end of the signature.

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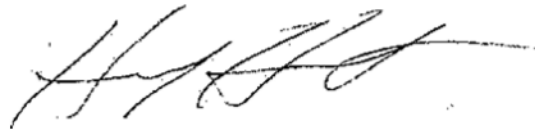
HUGH HOWERTON  
Federal ID No. 9173  
State Bar No. 10117950

ATTORNEY FOR DEFENDANTS  
DIRK BERRY AND AKIN-PORTER PRODUCE,  
INC. DBA AKIN & PORTER PRODUCE

CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of March 2022, I electronically filed the foregoing instrument with the Clerk of the Court using CM/ECF and hereby certify that I have faxed a copy of the above and foregoing, to the following non-CM/ECF participant:

Manuel G. Escobar, Jr.  
SBN: 06665800  
4407 S. Panam Expressway, Suite 108  
San Antonio, Texas 78225  
(210) 225-1400 | (210) 467-9846 Fax  
Email: [escobarm2@gmail.com](mailto:escobarm2@gmail.com)  
*Attorney for Plaintiffs*

A handwritten signature in black ink, appearing to read 'H. Howerton', with a horizontal line extending to the right.

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HUGH HOWERTON